

REMARKS

Claims 1-22 are now pending in the application. The title of the invention has been amended at the Examiner's request so that the title of the invention is clearly indicative of the invention to which all the claims are directed. Bases for the amendment can be found throughout the application, claims and drawings as originally filed and as such, no new matter has been presented. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

OBJECTION TO THE TITLE

Applicant has amended the title of the invention so that it is more clearly indicative of the invention to which all the claims are directed.

REJECTION UNDER 35 U.S.C. § 102

Claims 13 through 22 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,671,815 to Kabatnik et al. This rejection is respectfully traversed.

Applicant notes that Claim 13 includes a battery pack with a housing and a power tool with a tool housing. The housing of the battery pack is formed with a pair of guide rails and a pair of guide grooves, while the tool housing defines a pair of rails and a pair of grooves. The guide rails on the housing of the battery pack cooperate with the grooves on the tool housing and the guide grooves on the

housing of the battery pack cooperate with the rails on the tool housing to align a set of the battery terminals with a set of tool terminals.

The Examiner has stated, however, that the Kabatnik et al. reference includes "a housing with a guided groove and rails 59, 60 in parallel to the longitudinal axis of the battery 11 or 38. The terminal block 51 has blades 55, 63 cooperating with each other. See figures 3-5."

Applicant notes that:

- reference numeral 59 is employed in the '815 patent to designate a guide opening that is disposed between a guiding web (56) and an associated one of the contact plates (54);
- reference numeral 60 is employed in the '815 patent to designate a reinforcement of a contact plate (54) of the battery unit (11);
- reference numeral (11) is not employed in the '815 patent to designate a longitudinal axis but rather to designate the battery unit (11);
- reference numeral 38 is not employed in the '815 patent to designate a longitudinal axis but rather to designate the upper side of the battery unit (11);
- reference numeral 51 is not employed in the '815 patent to designate a terminal block that is part of a battery pack but rather to designate the base of the plug connection (50) that is "held in" the machine housing (12);
- reference numeral 55 is employed in the '815 patent to designate the double tongue contacts of the plug connection (50) that is associated with the machine housing (12), rather than with the battery unit (11); and

- reference numeral 63 is not employed in the '815 patent to designate a blade that cooperates with another "blade" but rather to designate a pair of insertion inclines that define a recess into which the guiding web (56) is received.

In short, the Examiner has not shown that the '815 patent teaches or suggests a system of cordless power tools having a battery pack, which has a pair of guide rails and a pair of guide grooves, and a power tool, which has a housing with a pair of grooves and a pair of rails. Furthermore, the Examiner has not shown that the '815 patent teaches or suggests a system of cordless power tools in which a pair of guide rails associated with a battery pack cooperate with a pair of grooves formed on the housing of a power tool and a pair of guide grooves associated with the battery pack and a pair of rails formed on the housing of the power tool to align sets of blade terminals associated with the battery pack and the power tool.

Accordingly, Applicant respectfully submits that the Examiner has not presented a *prima facie* case of anticipation or obviousness and as such, respectfully requests that the Examiner reconsider and withdraw the rejection of Claim 13 under 35 U.S.C. §102(b).

Applicant notes that Claims 14 through 22 depend from Claim 13 and as such, should be in condition for allowance for the reasons set forth for Claim 13, above.

Applicant additionally notes that the '815 patent does not teach or suggest a vertically movable latch member as set forth in Claim 20 or a relationship wherein a longitudinal axis of a (latch) recess extends generally transverse to an insertion axis as set forth in Claim 22.

NON-STATUTORY DOUBLE PATENTING

Claims 1-22 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-22 of U.S. Patent No. 6,653,815. This rejection is respectfully traversed.

Applicant initially notes that to establish a *prima facie* case of non-statutory type double patenting, the Examiner must (1) identify the inventions claimed in the claims under consideration and in the patent claims; and (2) establish that any variation between the inventions claimed in the claims under consideration and the earlier-issued patent claims would have been obvious to a person of ordinary skill in the art. Moreover, the Examiner's show of obviousness must follow the analysis used to establish a *prima facie* case of obviousness.

Applicant notes that the Examiner has merely asserted that the variations between the inventions claimed in the claims under consideration and the earlier-issued patent claims would have been obvious to a person of ordinary skill in the art and that this assertion is not supported by valid prior art evidence. Alternatively, if the assertion is based on the personal knowledge of the Examiner, Applicant requests an affidavit from the Examiner. As noted in 37 CFR §1.107, "when a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons."

Accordingly, Applicant submits that the Office has not presented a prima facie case of nonstatutory-type double patenting and as such, respectfully requests that the Examiner reconsider and withdraw the rejection of Claims 1 through 22 under the judicially created doctrine of obviousness-type double patenting.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: September 7, 2005

By: 
Michael D. Zalobsky
Reg. No. 45,512

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

MDZ/CR